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**IN THE
COURT OF APPEALS OF INDIANA**

JUDITH McHAFFEY,)	
)	
Appellant-Respondent,)	
)	
vs.)	No. 48A02-0702-CR-153
)	
STATE OF INDIANA,)	
)	
Appellee-Petitioner.)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable David W. Hopper, Judge
Cause No. 48D01-0510-FD-508

June 22, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-respondent Judith McHaffey appeals from the trial court's revocation of her probation. McHaffey argues that there is insufficient evidence supporting the revocation and that she received ineffective assistance of counsel at the probation revocation hearing. Finding no error, we affirm the judgment of the trial court.

FACTS

On June 15, 2006, McHaffey pleaded guilty to class D felony escape and the trial court sentenced her to thirty-six months imprisonment, suspending the entire sentence to probation. The trial court ordered McHaffey to, among other things, serve the first six months of probation on home detention, maintain employment of at least thirty-five hours a week, undergo a substance abuse evaluation, pay certain financial obligations, and behave well in society.

On June 21, 2006, McHaffey reported to Probation Officer Kelsey Carter. She did not report to Carter again. On July 28, 2006, the State filed a notice of probation violation, alleging that McHaffey had failed to, among other things, timely report to her probation officer, obtain a substance abuse evaluation, pay fees, fines, and costs, maintain regular employment, and successfully complete in-home detention. On August 25, 2006, the State filed an amended notice of probation violation, adding an allegation that McHaffey had committed the new offense of theft.

On September 26, 2006, the trial court held a hearing on the State's petition. Following the hearing, the trial court found that McHaffey had violated her probation by failing to report to the probation officer in a timely fashion, submit to a substance abuse

evaluation, obtain employment, successfully complete in-home detention, and behave well in society by committing the new offense of theft. The trial court revoked McHaffey's probation in full and ordered her to serve thirty-six months imprisonment. McHaffey now appeals.

DISCUSSION AND DECISION

When reviewing a trial court's decision to revoke probation, we consider only the evidence most favorable to the judgment and do not reweigh the evidence or judge the credibility of witnesses. Cox v. State, 850 N.E.2d 485, 488 (Ind. Ct. App. 2006). We will reverse only if the trial court abused its discretion, which occurs when the decision is against the logic and effect of the facts and circumstances before the court. Rosa v. State, 832 N.E.2d 1119, 1121 (Ind. Ct. App. 2005).

Probation is a matter of grace and conditional liberty that is a privilege, not a right. Noethlich v. State, 676 N.E.2d 1078, 1081 (Ind. Ct. App. 1997). Probation revocation is a two-step process. Cox, 850 N.E.2d at 488. First, the trial court must make a factual determination that a violation of a condition of probation has occurred. Id. Second, if a violation is established, then the trial court must determine whether the violation warrants revocation. Id.

I. Sufficiency of the Evidence

McHaffey first argues that there is insufficient evidence supporting the revocation of her probation. The State is required to prove an alleged violation of probation by a

preponderance of the evidence. Rosa, 832 N.E.2d at 1121. The violation of a single condition of probation is sufficient to permit a trial court to revoke probation. Id.

Here, McHaffey admitted that she did not report to her probation officer in a timely fashion, obtain employment, submit to a substance abuse allegation, pay her financial obligations, or successfully complete in-home detention. Tr. p. 29, 32-33. Additionally, Carter testified regarding McHaffey's violations. Although McHaffey claims to have valid reasons for these failures, this is merely an improper request that we reweigh the evidence. It is apparent that this evidence is sufficient to support the trial court's conclusion that she committed multiple violations of the conditions of her probation.

II. Assistance of Counsel

McHaffey next argues that she received the ineffective assistance of counsel at the probation revocation hearing. When evaluating a claim of ineffective assistance of counsel, we apply the two-part test articulated in Strickland v. Washington, 466 U.S. 668 (1984). Pinkins v. State, 799 N.E.2d 1079, 1093 (Ind. Ct. App. 2003). First, the defendant must show that counsel's performance was deficient. Strickland, 446 U.S. at 687. Second, the defendant must show that the deficient performance resulted in prejudice. Id. To establish prejudice, a defendant must show that there is a reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. at 694. A reasonable probability is a probability sufficient to undermine confidence in the outcome. Id.

McHaffey complains that her attorney did not object to certain testimony offered by the State in support of its allegation that she committed the new offense of theft while on probation. She insists that the testimony at issue was impermissible hearsay.

Even if we accept for argument's sake that McHaffey's attorney should have objected to the disputed testimony, this argument provides no relief to McHaffey because she cannot establish that she was prejudiced by the admission of the testimony. She cannot show that there is a reasonable probability that, had the disputed testimony been excluded, the outcome of the proceeding would have been different. As noted above, McHaffey admitted that she committed multiple violations of the conditions of her probation. Again, a single violation is sufficient to permit a trial court to revoke probation. Rosa, 832 N.E.2d at 1121. Consequently, even if we remove the alleged new offense of theft from the list of violations, McHaffey's admitted failures to report to her probation officer in a timely fashion, obtain employment, submit to a substance abuse allegation, pay her financial obligations, or successfully complete in-home detention remain. These remaining violations are sufficient to support the revocation. Thus, McHaffey has not established that she was prejudiced by her attorney's failure to object to the disputed testimony and, consequently, she has failed to show that her attorney was ineffective.

The judgment of the trial court is affirmed.

FRIEDLANDER, J., and CRONE, J., concur.